

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1189 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MAVJIBHAI PUNJABHAI SINCE DECEASED THROUGH HIS HEIRS &  
Versus  
COMPETENT AUTHORITY AND DY COLLECTOR  
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Appearance:

MR JR NANAVATI for Petitioner  
MR MUKESH A PATEL for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/04/2000

ORAL JUDGEMENT

1. This petition has arisen from the orders passed by the authorities below under the Urban Land Ceiling Act, 1976, which has now been repealed.

2. Learned counsel for the petitioner submitted that

petitioner is in possession of the land which was declared to be excess of the ceiling limit, and as such, this petition abates.

3. I find from the record of this case that the competent authority has passed the order declaring the land excess admeasuring 1298-27 sq. mts. vide order dated 4th May, 1985. Against this order, the petitioner preferred an appeal and the same came to be rejected on 1st November, 1988 by the Urban Land Tribunal. Affidavit in reply on behalf of the respondent No.1 has been filed in this court on 3rd November, 1999. Earlier reply has also been filed but second reply has been filed only on the question to show that the possession of the land in dispute has been taken by the respondent. Affidavit has been filed of Additional Collector (Co-ordination) Rajkot. It is stated in this reply that notice under section 10(3) has been issued on 1st April, 1987 which has been duly published in Government gazette on 16th April, 1987. It is further stated that accordingly the land in question stood vested in the Government and no right, title remains in the hands of the petitioner. In para-3 it is stated that notice under section 10(5) of the Act has been issued on 13th May, 1987 which has been duly served upon the petitioner. Then it is stated that the possession of the land in question has been taken on 29th December, 1988 in presence of panchas. It is unfortunate that along with this reply, the respondents have not produced either the copy of notice under section 10(5) or the panchnama which has been prepared for taking of the possession of the land in dispute.

4. During the course of arguments, learned counsel for the respondents produced on the record of this case, a zerox copy of some of the documents and therefrom it is tried to contend that notice under section 10 (5) has been given which has been duly served upon the petitioner and possession has also been taken accordingly. This notice does not bear any date. Otherwise also, if we go by the details of this notice, it is very difficult to accept that it is a notice under section 10 (5) of the Act, reference of which has been made by the respondent in para-3 of the affidavit. A document of possession has been prepared which is dated 29th December, 1988 but thereon also the signature of the petitioner is not there.

5. So it is difficult to accept in these facts, that the notice under section 10 (5) has been given to the petitioner and the same has been duly served upon him. Merely by stating that the notice has been served upon

the petitioner it is difficult to accept the same more so when this statement in the affidavit has been stated to be true as if it is believed to be true. It is a question of fact whether this notice has been served upon the petitioner or not for which the respondents have not produced any document. Document which has been prepared and kept in this file cannot be a legal document unless it is established as a fact by producing documentary evidence that notice under section 10 (5) has been duly served upon the petitioner. If the notice has been served and then possession has been taken then it is understandable otherwise these are nothing but only papers which have been prepared by the respondents for their own benefit and for keeping the same in file. This court has protected the petitioner by grant of stay meaning thereby the execution, implementation and operation of the order dated 4th May, 1985 of the respondent No.1 and that of the respondent No.2 dated 1-11-1988 have been stayed. These orders have been stayed on 14th February, 1989 and in fact what the respondents are stating is correct then these documents could have been produced along with the original reply. In the absence of the documents, it is difficult to accept that the petitioner has been given notice and legally the possession of the land has been taken by the respondents. Moreover, if we go by the two replies, what the respondents are contending that the possession has been taken of land of 3466.04 sq. mts. whereas from the documents which have been produced today on the record excess land is of 1298.27 sq. mts..

6. Taking into consideration the totality of the facts of this case, it is hereby held that the respondents have failed to prove that the possession of the land in dispute has been taken legally by them from the petitioner. As a result of this declaration, the special civil application in view of the fact that the Act itself has been repealed stands abated and accordingly the same is dismissed as having been abated. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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